



1997 SENATE BILL 211

May 20, 1997 - Introduced by Senators ADELMAN and DARLING. Referred to Committee on Judiciary, Campaign Finance Reform and Consumer Affairs.

1 **AN ACT** *to renumber and amend* 51.20 (13) (ct) 1., 51.20 (13) (ct) 2., 301.45 (7)
2 (c) 1. and 2., 938.34 (15m) (a), 938.34 (15m) (b), 971.17 (1m) (b) 1., 971.17 (1m)
3 (b) 2., 973.048 (1) and 973.048 (2); **to amend** 301.45 (1) (intro.), 301.45 (1) (a),
4 301.45 (1) (b), 301.45 (1) (bm), 301.45 (1) (c), 301.45 (1) (e) and 301.45 (7) (c)
5 (intro.); and **to create** 301.45 (1m), 301.45 (7) (c) 2m. and 3m., 301.46 (2m) (at),
6 971.17 (1m) (b) 3. and 973.048 (3) of the statutes; **relating to:** exempting
7 certain persons who have committed sex offenses from the sex offender
8 registration requirements.

Analysis by the Legislative Reference Bureau

Currently, a person must register as a sex offender if he or she has been convicted, found not guilty by reason of mental disease or defect or adjudicated delinquent for certain sex offenses, including sexual assault of a child or repeated sexual assault of a child. Sexual assault of a child is defined as sexual intercourse or sexual contact with a child who is younger than 16 years old, and repeated sexual assault of a child is 3 or more sexual assaults of the same child within a specific period of time. While sexual assault generally involves sexual intercourse or sexual contact without consent of the victim, consent is not an issue in cases involving sexual assault of a child.

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Under current law, the department of corrections (DOC) must maintain a registry of sex offenders that contains specified information about persons required to register as a sex offender. Generally, the information in the sex offender registry is confidential. However, beginning on June 1, 1997, DOC or other state agencies that have custody or control of a sex offender may release information from the registry to certain persons, including local law enforcement agencies, certain community organizations and the general public. In addition to releasing information from the sex offender registry, DOC and other state agencies are required in certain cases to notify law enforcement agencies and victims about the release of sex offenders from custody into the community.

This bill provides that no person under the age of 17 is required to register as a sex offender unless a judge determines that it would be in the interest of public protection to have the person register and then orders the person to register.

This bill also provides that a person who is 17 years of age or older and who has been convicted or found not guilty by reason of mental disease or defect for sexual assault of a child or repeated sexual assault of a child is not required to register as a sex offender if a judge determines that all of the following apply:

1. The person was not more than 4 years older or not more than 4 years younger than the child at the time of the sexual intercourse or sexual contact.
2. The child consented to the sexual intercourse or sexual contact.

However, even if the judge determines that the person is not required to register as a sex offender, the judge may still order the person to register as a sex offender if the judge determines that it would be in the interest of public protection to have the person register as a sex offender.

If a person is not required to register as a sex offender under the bill and he or she is not ordered by a judge to register as a sex offender, information about the person will not be included in the sex offender registry. Thus, the sex offender registry will not provide local law enforcement agencies, community organizations and the general public with information concerning the person. The bill does not change any provisions under current law that require DOC or other state agencies to notify law enforcement agencies and victims about the release of the person from custody into the community.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 51.20 (13) (ct) 1. of the statutes, as created by 1995 Wisconsin Act
2 440, is renumbered 51.20 (13) (ct) 2m. and amended to read:

3 51.20 (13) (ct) 2m. If the subject individual is before the court on a petition filed
4 under a court order under s. 938.30 (5) (c) 1. and is found to have committed a

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1 violation, or to have solicited, conspired or attempted to commit a violation, of s.
2 940.225 (1), (2) or (3), 944.06, 948.02 (1) or (2), 948.025, 948.05, 948.055, 948.06,
3 948.07, 948.08, 948.11 or 948.30, or of s. 940.30 or 940.31 if the victim was a minor
4 and the subject individual was not the victim's parent, the court ~~shall~~ may require
5 the individual to comply with the reporting requirements under s. 301.45 if the court
6 determines that it would be in the interest of public protection to have the individual
7 report under s. 301.45.

8 **SECTION 2.** 51.20 (13) (ct) 2. of the statutes, as created by 1995 Wisconsin Act
9 440, is renumbered 51.20 (13) (ct) 1m. and amended to read:

10 51.20 (13) (ct) 1m. Except as provided in subd. 1. ~~2m.~~, if the subject individual
11 is before the court on a petition filed under a court order under s. 938.30 (5) (c) 1. and
12 is found to have committed any violation, or to have solicited, conspired or attempted
13 to commit any violation, of ch. 940, 944 or 948 or ss. 943.01 to 943.15, the court may
14 require the subject individual to comply with the reporting requirements under s.
15 301.45 if the court determines that the underlying conduct was sexually motivated,
16 as defined in s. 980.01 (5), and that it would be in the interest of public protection to
17 have the subject individual report under s. 301.45.

18 **SECTION 3.** 301.45 (1) (intro.) of the statutes, as affected by 1995 Wisconsin Act
19 440, is amended to read:

20 301.45 (1) WHO IS COVERED. (intro.) ~~A~~ Except as provided in sub. (1m), a person
21 shall comply with the reporting requirements under this section if he or she meets
22 any of the following criteria:

23 **SECTION 4.** 301.45 (1) (a) of the statutes, as affected by 1995 Wisconsin Act 440,
24 is amended to read:

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1 301.45 (1) (a) ~~Is convicted, adjudicated delinquent or found in need of~~
2 ~~protection or services~~ on or after December 25, 1993, for any violation, or for the
3 solicitation, conspiracy or attempt to commit any violation, of s. 940.22 (2), 940.225
4 (1), (2) or (3), 944.06, 948.02 (1) or (2), 948.025, 948.05, 948.055, 948.06, 948.07,
5 948.08, 948.11 or 948.30, or of s. 940.30 or 940.31 if the victim was a minor and the
6 person was not the victim's parent.

7 **SECTION 5.** 301.45 (1) (b) of the statutes, as affected by 1995 Wisconsin Act 440,
8 is amended to read:

9 301.45 (1) (b) ~~Is in prison, a secured correctional facility, as defined in s. 938.02~~
10 ~~(15m), or a secured child caring institution, as defined in s. 938.02 (15g), or on~~
11 ~~probation, or parole, supervision or aftercare supervision~~ on or after
12 December 25, 1993, for any violation, for the solicitation, conspiracy or attempt to
13 commit any violation, of s. 940.22 (2), 940.225 (1), (2) or (3), 944.06, 948.02 (1) or (2),
14 948.025, 948.05, 948.055, 948.06, 948.07, 948.08, 948.11 or 948.30, or of s. 940.30 or
15 940.31 if the victim was a minor and the person was not the victim's parent.

16 **SECTION 6.** 301.45 (1) (bm) of the statutes, as created by 1995 Wisconsin Act
17 440, is amended to read:

18 301.45 (1) (bm) ~~Is in prison, a secured correctional facility, as defined in s.~~
19 ~~938.02 (15m), or a secured child caring institution, as defined in s. 938.02 (15g), or~~
20 ~~on probation, or parole, supervision or aftercare supervision~~ on or after
21 December 25, 1993, for a violation, or for the solicitation, conspiracy or attempt to
22 commit a violation, of a law of this state that is comparable to s. 940.22 (2), 940.225
23 (1), (2) or (3), 944.06, 948.02 (1) or (2), 948.025, 948.05, 948.055, 948.06, 948.07,
24 948.08, 948.11 or 948.30 or that is comparable to a violation of s. 940.30 or 940.31 if
25 the victim was a minor and the person was not the victim's parent.

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1 **SECTION 7.** 301.45 (1) (c) of the statutes, as affected by 1995 Wisconsin Act 440,
2 is amended to read:

3 301.45 (1) (c) Is found not guilty ~~or not responsible~~ by reason of mental disease
4 or defect on or after December 25, 1993, and committed under s. ~~51.20 or~~ 971.17 for
5 any violation, or for the solicitation, conspiracy or attempt to commit any violation,
6 of s. 940.22 (2), 940.225 (1), (2) or (3), 944.06, 948.02 (1) or (2), 948.025, 948.05,
7 948.055, 948.06, 948.07, 948.08, 948.11 or 948.30, or of s. 940.30 or 940.31 if the
8 victim was a minor and the person was not the victim's parent.

9 **SECTION 8.** 301.45 (1) (e) of the statutes, as affected by 1995 Wisconsin Act 440,
10 is amended to read:

11 301.45 (1) (e) Is ordered by a court under sub. (1m) (d) or s. 51.20 (13) (ct),
12 938.34 (15m), 971.17 (1m) (b) 2. 1m. or 3. or 973.048 (1m) or (3) to comply with the
13 reporting requirements under this section.

14 **SECTION 9.** 301.45 (1m) of the statutes is created to read:

15 301.45 (1m) EXCEPTION TO REGISTRATION REQUIREMENT. (a) In this subsection:

- 16 1. "Adult" means a person who has attained the age of 17.
17 2. "consent" has the meaning given in s. 940.225 (4).
18 3. "Juvenile" means a person who has not attained the age of 17.

19 (b) An adult is not required to comply with the reporting requirements under
20 this section if a court determines that all of the following apply:

- 21 1. The person meets any of the criteria under sub. (1) (a) to (dt) based on any
22 violation, or on the solicitation, conspiracy or attempt to commit any violation, of s.
23 948.02 (1) or (2) or 948.025 or of a law of another state that is comparable to s. 948.02
24 (1) or (2) or 948.025.

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1 2. At the time of the violation, or of the solicitation, conspiracy or attempt to
2 commit the violation, of s. 948.02 (1) or (2) or 948.025 or of a law of another state that
3 is comparable to s. 948.02 (1) or (2) or 948.025, the person was not more than 4 years
4 older or not more than 4 years younger than the child.

5 3. The child consented to the sexual contact or sexual intercourse.

6 (c) If a person who is complying with the reporting requirements under this
7 section believes that he or she is not required under par. (b) to comply with the
8 reporting requirements and the person has not been ordered under s. 971.17 (1m) (b)
9 or 973.048 to comply with the reporting requirements, the person may move a court
10 to make the determination of whether par. (b) applies to the person. A motion made
11 under this paragraph shall be filed with the circuit court for the county in which the
12 person was convicted or found not guilty by reason of mental disease or defect, except
13 that if the person meets the criteria of sub. (1) (dh) the person shall file the motion
14 in the circuit court for the county in which he or she resides. A court shall hold a
15 hearing on a motion made by a person under this paragraph. A person may make
16 only one motion under this paragraph.

17 (d) Notwithstanding par. (b), if a court determines after a hearing under par.
18 (c) that the person is not required to comply with the reporting requirements under
19 this section, the court may order the person to comply with the reporting
20 requirements if the court determines that it would be in the interest of public
21 protection to have the person report under this section.

22 (e) 1. Except as provided in subd. 2., a juvenile who meets any of the criteria
23 under sub. (1) (a) to (dt) is not required to comply with the reporting requirements
24 under this section.

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1 2. Notwithstanding s. 301.45 (1) (a) to (dt), a juvenile who is complying with
2 the reporting requirements under this section on the effective date of the subdivision
3 [revisor inserts date], because he or she was covered under s. 301.45 (1) (a) to (dt),
4 1995 stats., shall comply with the reporting requirements unless the juvenile files
5 a motion in the circuit court for the county in which the person was adjudicated
6 delinquent, found in need of protection or services or found not responsible by reason
7 of mental disease or defect and, after a hearing on the motion, the court determines
8 that it is not necessary, in the interest of public protection, to have the juvenile report
9 under this section. A juvenile may make only one motion under this subdivision.

10 **SECTION 10.** 301.45 (7) (c) (intro.) of the statutes, as affected by 1995 Wisconsin
11 Act 440, is amended to read:

12 301.45 (7) (c) A person about whom information is maintained in the registry
13 under sub. (2) may request expungement of all pertinent information in the registry
14 ~~on if any of the grounds that his or her~~ following apply:

15 1m. The person's conviction, delinquency adjudication, finding of need of
16 protection or services or commitment has been reversed, set aside or vacated.

17 (d) The department shall purge all of ~~that~~ the information maintained in the
18 registry under sub. (2) concerning a person to whom par. (c) applies if the department
19 receives all of the following:

20 **SECTION 11.** 301.45 (7) (c) 1. and 2. of the statutes, as affected by 1995 Wisconsin
21 Act 440, are renumbered 301.45 (7) (d) 1. and 2., and 301.45 (7) (d) 2., as renumbered,
22 is amended to read:

23 301.45 (7) (d) 2. A certified copy of the court order reversing, setting aside or
24 vacating the conviction, delinquency adjudication, finding of need of protection or

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1 services or commitment or a certified copy of the court's determination under sub.
2 (1m) (c) or (e) 2., whichever is applicable.

3 **SECTION 12.** 301.45 (7) (c) 2m. and 3m. of the statutes are created to read:

4 301.45 (7) (c) 2m. A court has determined under sub. (1m) (c) that the person
5 is not required to comply with the reporting requirements under this section and the
6 court has not ordered the person to comply with the reporting requirements under
7 sub. (1m) (d).

8 3m. A court has determined under sub. (1m) (e) 2. that the person is not
9 required to comply with the reporting requirements under this section.

10 **SECTION 13.** 301.46 (2m) (at) of the statutes is created to read:

11 301.46 (2m) (at) 1. Paragraphs (a) and (am) do not apply to a person to whom
12 s. 301.45 (1m) (b) or (e) 1. applies unless the person is required to comply with the
13 reporting requirements under s. 301.45 by a court acting under s. 51.20 (13) (ct),
14 301.45 (1m) (d), 938.34 (15m), 971.17 (1m) (b) 3. or 973.048 (3).

15 2. Paragraphs (a) and (am) do not apply to a person if a court has determined
16 under sub. (1m) (e) 2. that the person is not required to comply with the reporting
17 requirements under s. 301.45.

18 **SECTION 14.** 938.34 (15m) (a) of the statutes, as created by 1995 Wisconsin Act
19 440, is renumbered 938.34 (15m) (bm) and amended to read:

20 938.34 (15m) (bm) If the ~~child~~ juvenile is adjudicated delinquent on the basis
21 of a violation, or the solicitation, conspiracy or attempt to commit a violation, of s.
22 940.225 (1), (2) or (3), 944.06, 948.02 (1) or (2), 948.025, 948.05, 948.055, 948.06,
23 948.07, 948.08, 948.11 or 948.30, or of s. 940.30 or 940.31 if the victim was a minor
24 and the ~~child~~ juvenile was not the victim's parent, the court shall may require the
25 ~~person~~ juvenile to comply with the reporting requirements under s. 301.45 if the

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1 court determines that it would be in the interest of public protection to have the
2 juvenile report under s. 301.45.

3 **SECTION 15.** 938.34 (15m) (b) of the statutes, as created by 1995 Wisconsin Act
4 440, is renumbered 938.34 (15m) (am) and amended to read:

5 938.34 **(15m)** (am) Except as provided in par. ~~(a)~~ (bm), if the ~~child~~ juvenile is
6 adjudicated delinquent on the basis of any violation, or the solicitation, conspiracy
7 or attempt to commit any violation, under ch. 940, 944 or 948 or ss. 943.01 to 943.15,
8 the court may require the ~~child~~ juvenile to comply with the reporting requirements
9 under s. 301.45 if the court determines that the underlying conduct was sexually
10 motivated, as defined in s. 980.01 (5), and that it would be in the interest of public
11 protection to have the ~~child~~ juvenile report under s. 301.45.

12 **SECTION 16.** 971.17 (1m) (b) 1. of the statutes, as created by 1995 Wisconsin Act
13 440, is renumbered 971.17 (1m) (b) 2m. and amended to read:

14 971.17 **(1m)** (b) 2m. If the defendant under sub. (1) is found not guilty by reason
15 of mental disease or defect for a violation, or for the solicitation, conspiracy or
16 attempt to commit a violation, of s. 940.22 (2), 940.225 (1), (2) or (3), 944.06, 948.02
17 (1) or (2), 948.025, 948.05, 948.055, 948.06, 948.07, 948.08, 948.11 or 948.30, or of s.
18 940.30 or 940.31 if the victim was a minor and the defendant was not the victim's
19 parent, the court shall require the defendant to comply with the reporting
20 requirements under s. 301.45 unless the court determines, after a hearing on a
21 motion made by the defendant, that the defendant is not required to comply under
22 s. 301.45 (1m), in which case subd. 3. applies.

23 **SECTION 17.** 971.17 (1m) (b) 2. of the statutes, as created by 1995 Wisconsin Act
24 440, is renumbered 971.17 (1m) (b) 1m. and amended to read:

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1 971.17 **(1m)** (b) 1m. Except as provided in ~~subd. 1.~~ subds. 2m. and 3., if the
2 defendant under sub. (1) is found not guilty by reason of mental disease or defect for
3 any violation, or for the solicitation, conspiracy or attempt to commit any violation,
4 of ch. 940, 944 or 948 or ss. 943.01 to 943.15, the court may require the defendant to
5 comply with the reporting requirements under s. 301.45 if the court determines that
6 the underlying conduct was sexually motivated, as defined in s. 980.01 (5), and that
7 it would be in the interest of public protection to have the defendant report under s.
8 301.45.

9 **SECTION 18.** 971.17 (1m) (b) 3. of the statutes is created to read:

10 971.17 **(1m)** (b) 3. If the court determines under subd. 2m. that the defendant
11 is not required to comply with the reporting requirements under s. 301.45, the court
12 may order the defendant to comply with the reporting requirements if the court
13 determines that it would be in the interest of public protection to have the defendant
14 report under s. 301.45.

15 **SECTION 19.** 973.048 (1) of the statutes, as created by 1995 Wisconsin Act 440,
16 is renumbered 973.048 (2m) and amended to read:

17 973.048 **(2m)** If a court imposes a sentence or places a person on probation for
18 a violation, or for the solicitation, conspiracy or attempt to commit a violation, of s.
19 940.22 (2), 940.225 (1), (2) or (3), 944.06, 948.02 (1) or (2), 948.025, 948.05, 948.055,
20 948.06, 948.07, 948.08, 948.11 or 948.30, or of s. 940.30 or 940.31 if the victim was
21 a minor and the person was not the victim's parent, the court shall require the person
22 to comply with the reporting requirements under s. 301.45 unless the court
23 determines, after a hearing on a motion made by the person, that the person is not
24 required to comply under s. 301.45 (1m), in which case sub. (3) applies.

